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Events**

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**LOCAL CASES OF CARGO AND  
TERMINAL DAMAGE**

**By Jaime Rodrigo de Larrucea**

Prof. Maritime Law  
(UPC-BARCELONA TECH)

**A.- *LIABILITIES OF TERMINAL OPERATORS***

The present exposition is the point of view of a Jurist, who is specialist in the subject, about one of most important aspects of the maritime business: the liability of terminal operators.

It is difficult to synthesise which are the main losses and damages related to the goods handling in the ports enclosures due to the great richness and variety of situations that we can find in nowadays terminal operating: general cargo, multipurpose, bulks, containers, etc.

In attention to all these different situations there can just be exposed here some of the basic and most important subjects related to the terminal operators' liabilities: protection of terminals and stevedores' liability in cases of loss or damage occurred in their custody (specially, the cover of the Himalaya clause and its application since the "*Mahkutai case*", insurance covers for terminal operators, most usual damage claims occurring in

terminals and a basic and very general guide for container handling and claim prevention.

## **B.- STUDY OF “HIMALAYA CLAUSE”**

The object of the so-called Himalaya clause is to protect the carrier's servants, agents and subcontractors, such as stevedores and road hauliers, who otherwise may be exposed to tortuous liability where loss or damage occurs in their custody.

It is a fundamental principle of English Law that only a person who is party to a contract may sue on it. Similarly, the protection afforded by the terms of a contract can only be relied upon by the parties to that contract. Thus, the benefit of any exception or limitation clauses in a contract of affreightment cannot be relied upon by a person who is not a party to the contract, e.g. a Master, crew member or independent contractor (Terminal, Stevedore Company, etc.), even though he may have participated in the performance of the contract; see the case of “*Midland Silicones v Scruttons*” [1962].

It is necessary, therefore, for a shipowner who wishes to protect his Master, crew or independent contractors, to insert in a charter-party and more particularly in a bill of lading appropriate express words exempting such persons from liability. The clause which is commonly used in this respect is called a “*Himalaya*” clause; named after the case of “*Adler v Dickson*” [1954] involving a personal injury claim on board the S.S. HIMALAYA and where the clause had been inserted in the passenger ticket.

The wording of the Himalaya clause is as follows:

*<<No servant or agent of the carrier (including every independent contractor from time to time employed by carrier) shall in any circumstances whatsoever be under any liability whatsoever to the shipper, consignee or owner of the goods or to any holder of this bill of lading for any loss, damage, or delay of*

*whatsoever kind arising resulting directly or indirectly from any act neglect or default on his part while acting in the course of or in connection with his employment and, but without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty herein contained and every right, exception from liability, defence and immunity of whatsoever nature applicable to the carrier or to which the carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the carrier acting as aforesaid and for the purpose of all the foregoing provisions of this clause the carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extend be or be deemed to be parties to the contract in or evidenced by this bill of lading.>>*

By virtue of Article IV *bis* of the Hague-Visby Rules, for the first time in relation to the carriage of goods by sea the benefit of statutory exceptions afforded to the carrier are extended to “a servant or agent of the carrier (such servant or agent not being an independent contractor)”. Despite the Privy Council decision in the “*Eurymedon*” [1975], it has remained questionable whether a stevedore, who is an independent contractor, would be able to rely on a Himalaya clause in a bill of lading which is subject to the Hague-Visby Rules.

### **C.- THE MAHKUTAI CASE (1996)**

This discussion (whether a stevedore would be able to rely on a Himalaya clause in a bill of lading which is subject to the Hague-Visby Rules) has been solved by the recent decision of the Privy Council in “*The Mahkutai*” [1996] A.C. 650, which holds the key to the solution of the present discussion. In virtue of this decision the pendulum of judicial opinion has reached to an end and stevedore’s liability is now exempted such as the liability of servants or agents of the carrier.

This was a decision of the Privy Council<sup>1</sup> on appeal from the Court of Appeal in Hong Kong. The facts in brief were that cargo being carried on a voyage from Jakarta in Indonesia to Shantou in China was found to have been damaged by sea water on arrival. The vessel then proceeded to Hong Kong, where the cargo owners instituted proceedings against the shipowners claiming damages for breach of contract, breach of duty and negligence. The shipowners, in answer to the claim, sought to rely on a Himalaya clause in the bill of lading to which they were not parties.

At the outset of his judgement, Lord Goff analysed in detail the impact of the Himalaya clause in the context of that case, and stated at page 658 as follows under the heading “*The pendulum of judicial opinion*”:

*“The two principles which the shipowners invoke are the product of developments in English law during the present century. During that period, opinion has fluctuated about the desirability of recognising some form of modification of, or exception to, the strict doctrine of privity of contract to accommodate situations which arise in the context of carriage of goods by sea, in which appears to be in accordance with commercial expectations that benefit of certain terms of the contract of carriage should be made available to parties involved in the adventure who are not parties to the contract, these cases have been concerned primarily with stevedors claiming the benefit of exceptions and limitations in bills of lading, but also with shipowners claiming the protection of such terms contained in charterers’ bills. At first there appears to have a readiness on the part of judges to recognise such claims, especially in ‘Elder, Dempster & Co. v Paterson, Zochonis & Co. Ltd.’ [1924] A.C. 522, concerned with the principle of bailment on terms. Opinion however hardened against them in the middle of the century as the pendulum swung back in the direction of orthodoxy in ‘Midland Silicones Ltd. v Scruttons Ltd.’ [1962] A.C. 446; but in more recent years it has swung back again to recognition of their commercial desirability, notably in the two leading cases concerned with claims by stevedors to the protection of a*

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<sup>1</sup> Lord Goff of Chieveley, Lord Jauncey of Tullichettle, Lord Nicholls of Birkenhead, Lord Hoffmann and Sir Michael Hardie Boys. The judgement of the Board was delivered by Lord Goff.

*Himalaya clause* — ‘*New Zealand Shipping Co. Ltd. v A.M. Satterthwaite & Co. Ltd.*’ (*The Eurymedon*) [1975] A.C. 154 and ‘*Port Jackson Stevedoring Pty. Ltd. v Salmond and Spraggon (Australia) Pty. Ltd.*’ (*The New York Star*) [1981] 1 W.L.R. 138. —”

Lord Goff then proceeded to consider in detail the swings in the pendulum of judicial opinion by reference to several cases which he considered in great detail at pages 659 to 664 of his judgement. He then concluded as follows at 664 C to 665 C:

*“Nevertheless there can be no doubt of the commercial need of some such principle as this, and not only in cases concerned with stevedors; and the bold step taken by the Privy Council in ‘The Eurymedon’ [1975] A.C. 154, and later developed in ‘The New York Star’ [1981] 1 W.L.R. 138, has been widely welcomed. But is legitimate to wonder whether their Lordships have in mind not only Lord Wilberforce’s discouragement of fine distinctions, but also the fact that the law is now approaching the position where, provided that the bill of lading contract clearly provides that (for example) independent contractors such as stevedors are to have the benefit of exceptions and limitations contained in the contract, they will be able to enjoy the protection of those terms as against the cargo owners. This is because (1) the problem of consideration in these cases is regarded as having been solved on the basis that a bilateral agreement between the stevedors and the cargo owners, entered into through the agency of the shipowners, may, though itself unsupported by consideration, be rendered enforceable by consideration subsequently furnished by the stevedors in the performance of their duties as stevedors for the shipowners. (2) the problem of authority from the stevedors to the shipowners to contract on their behalf can, in the majority of cases, be solved by recourse to the principle of ratification; and (3) consignees of the cargo may be held to be bound by the principle in ‘Brandt v Liverpool, Brazil and River Plate Steam Navigation Co. Ltd.’ [1924] 1 K.B. 575.”*

Next comes the crucial paragraph:

*“Though these solutions are not perceived to be generally effective for their purpose, their technical nature is all too apparent; and the time may well*

*come when in an appropriate case, it will fall to be considered whether the courts should take what may legitimately be perceived to be the final, and perhaps inevitable, step in this development, and recognize in these cases a fully fledged exception to the doctrine of privity of contract, thus escaping from all the technicalities with which the courts are now faced in English law. It is not far from their Lordships' minds that, if the English courts were minded to take that step, they would be following in the footsteps of the Supreme Court of Canada: See 'London Drugs Ltd. v Kuehne & Nagel International Ltd.' [1992] 97 D.L.R. (4<sup>th</sup>) 261 and, in a different context, the High Court of Australia: See 'Trident General Insurance Co. Ltd. v McNiece Bros. Pty. Ltd.' [1988] 165 C.L.R. 107. Their Lordships have given consideration to the question whether they should face up to this question in the present appeal. However, they have come to the conclusion that it would not be appropriate for them to do so, first, because they have not heard argument specifically directed towards this fundamental question and, second because, as will become clear in due course, they are satisfied that the appeal must in any event be dismissed."*

In consequence there should be now upheld, in Lord Goff's words, a fully fledged exception to the doctrine of privity of contract, thus escaping all technicalities such as the need for ratification which was one of the three examples specifically mentioned by Lord Goff in the just quoted passage.

As result of the "Mahkutai case", the Himalaya clause, in a bill of lading which is subject to the Hague-Visby Rules, has already been used to protect stevedores' liability in cases of loss or damage occurred in their custody. This is the case of the Sentence pronounced by the Court of Appeal of London (Civil Division), on February 6<sup>th</sup> 1998, on appeal from Queen's Bench Division Commercial Court<sup>2</sup> (*Canada Maritime Limited v Maritima Valenciana S.A.*). In this Sentence, the Court of Appeal says the following in respect of the "*Midland Silicones*" and the "*Mahkutai*" cases:

*"In my judgment, that is a wholly unrealistic standpoint, having regard to the powerful critique advanced by Lord Goff of the Midland Silicone's*

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<sup>2</sup> Before Lord Justice Hirst, Lord Justice Buxton and Sir John Knox.

*principle in cases of carriage of goods by sea which, as he pointed out, is supported by two leading Commonwealth authorities.*

*It is also noteworthy that even in Midland Silicones itself, Lord Reid foresaw the possibility of change in the law at page 474, in a passage which Lord Goff categorized in The Mahkutai as a most important observation (page 661).*

*(...) The Mahkutai case shows that, in cases of carriage of goods by sea like the present, the doctrine of privity of contract shall well be tottering on the brink of collapse” (pages 13 and 14).*

Finally, the Court of Appeal concludes (pages 21 and 22):

*“The Mahkutai shows the pendulum swinging very strongly back in favour of an exception to the privity of contract doctrine”.*

## **D.- THE INSURANCE COVER BY THE P & I CLUBS (SPECIAL REFERENCE TO THE T.T. CLUB).**

### **1. The insurance cover by the P & I Clubs**

It is an irrefutable reality that commerce and maritime navigation would hardly exist without maritime insurance, neither shipowners nor shippers would risk their capitals in the sea if they wouldn't have the insurance's protection. Because of this the traditional maritime insurance has been considered as an insurance on the goods exposed to the sea dangers: vessel, cargo and freight.

Since the middle of 19<sup>th</sup> century the shipowner also started to need protection against the consequences of damages and losses caused by his vessel to third parties. Until those dates, the general configuration of law and the existence of a free contracting principle allowed the shipowner to exclude his liability in almost all the circumstances, which made unnecessary the cover of this risk.

It is essential for a correct running of the shipping industry to contract a liabilities insurance. In this context, it is important to point that one of the tendencies of Maritime Law in the present century is the increase of the shipowner's liability as, on the one hand, there is an increase of extra-contractual liability by means of the application of strict liability and objectification of guilt; and, on the other hand, in respect to contractual liability, the reach of possible exoneration agreements is limited by the imperative norms, and at the same time the base of this liability has been increased.

The general increase of shipowner's liabilities has caused that de P & I insurance is nowadays considered as an absolutely indispensable insurance.

The P & I's mutual liability insurance is substantially different from the ones subscribed with an ordinary insurance company. First, the clubs do not extend insurance policies to their policy-holders, but they admit them as members of the society. Second, when they are admitted as members, they are not only policy-holders, but they acquire the condition of partners in the insurance mutual. Because of this, the relations mutual-member are double: they derive both from the insurance contract and the society contract. The society's contract will be regulated by the memorandum and the articles of association, while the insurance contract will be regulated by the club's regulations.

The memorandum and the articles of the association define who can be a member of the P & I Club. Usually the clubs define in a wide way the persons who can be accepted as members. In this way, it is usual to stipulate that the society covers its members against any liability in which they incur. This members are shipowners, managers, mortgage creditors, charterers..., being included some times others such as shipyard companies.



The insured interest in this type of insurance is not a specific thing: it is the complete inheritance of the policy-holder, in front of liability debts because of damages or losses caused to third parties, related with the registered vessel.

## **2. The TT Club**

The “Trough Transport Mutual Insurance Association Ltd.”<sup>3</sup>, also known as “T.T. Club”, was the first Trough Transit Mutual Club and started operating in the summer of 1968.

The TT Club is a mutual insurer similar in many respects to a ship operators’ P & I club, except that it insures different risks. It is organised as a society in accordance to the laws of Bermudas, country where the Club moved its head office in 1970.

While the club is jointly managed by Thomas R. Miller, Charles Taylor and the West of England, the daily servicing is performed by its exclusive agents in London, Hong Kong, New York, San Francisco and Sidney, who are supported by a global network of correspondents. The London agents, “Through Transport Mutual Insurance Association of Europe Ltd.” (T.T. Europe), also manage the European subsidiary and use the same network of exclusive agents and correspondents.

The TT Club insures trough-transport operators for their cargo liabilities arising both on land and sea, for door to door transport. It covers a ship operator’s containers and trailers for loss, damage, fines, general average and salvage contributions and complements his P & I club cover by insuring third-party liabilities and fines during the land stage of the carriage. Also, the TT Club is the P & I and equipment insurer for the container lessors, stevedores, terminal and depot operators, port authorities, freight forwarders and other non-shipowning transport operators such as

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<sup>3</sup> Named like this since 1976. Before it was named “Trough Transit Marine Mutual Assurance Association (Bermuda) Ltd.”

hauliers. While many of these operators insured by the TT Club have no connection with companies operating ships, a number of ship operators are also covered by the TT Club for their non-shipowning cargo handling and carriage activities.

Through long the years, the TT Club has been extending and enlarging its cover, including in it other people related with container's transport and manipulation who needed protection. At the present time the TT Clubs' cover is divided in five sections:

- I. Ship Operators
- II. Forwarders and Transport Operators
- III. Cargo Handling Facilities
- IV. Port Authorities
- V. Equipment Lessors

In every Section there are listed all the covered risks and there is also contemplated the possibility of including others optionally. From all this covers, we are now only interested in Sections III (Cargo Handling Facilities cover) and IV (Port Authorities cover) (See Doc. 1).

a) Cargo Handling Facilities Cover

This cover includes marine terminals, inland clearance depots, river terminals, container freight stations, airfreight handling terminals and stevedore operations.

The high investments in equipment and the possible liabilities to which are exposed the people that operate in a terminal or container depot are the reasons that make this insurance indispensable for them. The Club's insured standard risks for Cargo Handling Facilities include:

- 1. Liabilities for loss or damage to cargo.

2. Liabilities for loss and damage to your customers' equipment and ships.
3. Liabilities for errors and omissions including delay and unauthorised delivery.
4. Third party liabilities.
5. Liability and clear-up costs for sudden and accidental pollution.
6. Fines and duty.
7. Investigation, defence and mitigation costs.
8. Disposal, quarantine and disinfection costs.
9. Loss or damage to owned or leased equipment, including terrorism (available on its own).
10. Special Discretionary Insurance.

Apart from this, it is an optional possibility to add the following special risks to the standard cover:

1. Business interruption (cover of the costs due to this interruption).
2. Liabilities as a ships' agent.
3. "Fire Legal" (losses and damages caused by fire for which the policy-holder is legally responsible) and other property risks.
4. Infringement of personal rights (including libel and slander).
5. Advice and information liability.
6. Hull and P & I insurance.

It is also available to insure other additional risks for the North American market:

1. Public Officials & Employment Liabilities.
2. Medical Payments.
3. Tenants Legal Liability.

The TT Club is a mutual and is run for the benefit of its members, which has over US \$300m total assets and it insures about 1,150 port and terminal operators worldwide.

b) Port Authorities Cover

Ports and terminals around can insure their risks with the TT Club. Port cover is variable as no one facility faces the same risks and liabilities.

This service was started in 1988 due to the port authorities' increasing liability —specially in the cases in which they dispose and manage their own facilities and equipment— as consequence of legal, environmental and commercial changes which have occurred this last years.

Because of this it has been structured a special and adequate type of cover for this particular demands and necessities. The Club's standard risks for port authorities include:

1. Liabilities for loss or damage to cargo and customers' equipment and ships.
2. Errors and omissions liabilities including delay and unauthorised delivery.
3. Third party liabilities (including sudden and accidental pollution).
4. Fines and duty.
5. Investigation, defence and mitigation costs.
6. Disposal, quarantine and disinfection costs.
7. Wreck removal costs.
8. Loss or damage to owned or leased equipment, including strikes, riots and terrorism.
9. Maintaining channels, buoys and lights.
10. Pilotage.
11. Special Discretionary Insurance.

There is also available an additional cover for port authorities, which includes:

1. Business interruption risks.
2. “Fire Legal” and other property risks.
3. Berth damage.
4. Infringement of personal rights (libel, slander).
5. Advice and information liability.
6. Hull and P & I insurance.

For the North American market there are available other additional risks:

1. Public Officials & Employment Liabilities.
2. Medical Payments.
3. Tenants Legal Liability.

It is, as you can see, a wide cover designed to give an adequate cover which satisfies the need of security that these type of members have.

Each member’s premium is calculated on the basis of the nature and size of his business, his individual claims record and his use of the Club’s services. This basic contribution system is renewable at the end of every insured period, and it changes from one member to another in accordance to the risks insured by them. The percentage with which every member contributes is the same for everyone and it is settled by the Directors.

This contribution system is very similar to the P & I Clubs’ system: the member provides an initial contribution and, in the case that these are not enough to cover the indemnification necessities, he will have to provide additional or complementary contributions. The Club, however, tries not to demand this supplementary contributions unless it is really necessary.

First, the Club uses its reserves' found<sup>4</sup> and only when this is not enough turns to its members<sup>5</sup>. Once the insured period has been closed, there cannot be done supplementary contributions' demands. This permits the member to know the final cost of the insurance about eight months after the policy has expired.

The Club tries to protect its members from fluctuations in the supplementary contributions by using its reserves or by means of reinsurance (the Club reinsures the excess of losses).

## **E.- GUIDE FOR HANDLING AND PREVENTION.**

### **1. Handling of the container. Pre- and post-sea carriage**

#### **a) Lifting**

Freight containers are custom-built to be used in a custom-built mechanical handling system and should never be handled or secured by equipment not designed for use with such loads. Except where a purpose-built side handling machine is used, loaded containers must always be lifted using a spreader.

Containers are not designed to be lifted by means of four chains secured by hooks to the four corner postings. In extreme cases, this method of handling could cause the container collapse. Containers are designed to be lifted vertically through the four corner castings only but not at an angle to the vertical by chains from a central hook which impose forces on the container that it was never designed to withstand.

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<sup>4</sup> These reserves are increased by the profits obtained from the Club's investments. Bermudas' law gives the Club great investment's freedom.

<sup>5</sup> Until the present time, the TT Club has just demanded supplementary contributions in 1970 (15%), in 1971 (15%) and in 1972 (only 5%).

b) Carriage

Containers are designed to be secured for transport by means of twist locks securing the four corner castings to the transport medium, whatever that might be. Under no circumstances should containers be secured to transport using any other method. In particular, the use of rope, chain or wire securing, however achieved, is inadequate and should not be adopted under any circumstances. Always ensure that all four twist locks are properly engaged before commencing transit.

c) Storage

Containers are designed to stand on even ground supported from their four bottom corner castings. Bottom rails are not designed to support containers. If containers, particularly loaded containers, are stored on rough or uneven ground this may lead to warping and deformation of structure of the container.

d) Checking for damage

Containers are weather-tight receptacles for the carriage of cargo and should withstand hose testing, but are not watertight. They are not designed to withstand the ingress of water if left standing in water. This means that cargo in containers is much better protected than packaged break-bulk cargo. However, should the integrity of the container be breached in any way (twist lock hole in roof, damaged door seal, etc.), the container becomes worse than break-bulk cargo as the moisture is shut in so that the cargo cannot dry out and mould will ensue.

Accordingly it is important to check containers at all interfaces between transport modes to verify their integrity. If holes are found and the container is an export container and has been subjected to wetting, consideration needs to be given to opening for inspection to facilitate any necessary drying out prior to shipment. If the container has not been

subjected to wetting, temporary taped repair may be possible to complete the transit. In either event, appropriate arrangements need to be put in hand to have the container repaired.

Under no circumstances should containers be welded while still loaded with cargo. Fires in cargo have been known to start this way and lie dormant until after shipment, thereby imperilling the ship.

## **2. Claims handling. Terminal contracts**

Claims handling relative to terminal contracts depends upon infinitely variable factors, which make impossible to discuss them in all but the most basic terms on anything other than a specific case where these factors are gelled. Accordingly, all that can be attempted here is to identify some of the factors which will influence claims handling, which term must be read to cover settling claims against the carrier and, where possible, making recoveries from other parties.

Upon perusing some terminal contracts, carriers could be forgiven for being unaware that, in such contracts, they are the customer, as the contract is written entirely for the benefit of the terminal operator as one long line of indemnity. Terminals love trying to use carriers' P & I cover as a convenient dustbin for whatever they can get in it, but now that P & I costs have soared carriers would be well advised to protect their P & I cover from the worst excesses of such contracts. In Particular the following should be watched out for:

### **a) Onus of proof**

Terminals say that carriers must prove their negligence.

The carrier prefers that once he proves loss or damage while the goods were in the terminal's care, thereafter they must prove that they were not negligent if they wish to avoid liability.



b) Liability limits

Terminals offer a tariff of low levels of liability with a high minimum monetary limit and a very short time limit during which the carrier claims against them. However, when terminals claim against carriers they do not want any limits at all in time or amount.

Carrier prefers, of course, the *quid pro quo*. In short, that carrier will give the terminal what they give him. Carrier wants one reasonable limit per incident, all claims with small excess to obviate insignificant claims and not a tariff designed to reduce all liability levels. Carrier wants a reasonable level of recourse to them and believe that there is no care without responsibility.

c) Indemnity

Terminal want an indemnity for all claims in excess of contract limits.

The carrier prefers a circular indemnity/Himalaya clause, but that is all. If they do something stupid and incur a huge claim on account of their negligence why should they indemnified by the carrier for claims in excess of low maximum figure?

d) Exclusions

Terminals do nor want to be liable for anything and want to pack the contract full of exclusions.

Carrier prefers that terminals should be liable for that only which is in their control. Any exclusions they apply to their liability ought to be exclusions for the carriers also.

In this respect, UNCITRAL has prepared a Convention on Liability of Operators of Transport Terminals in International Trade (UNCITRAL OTT Convention). This is based on the Hamburg Rules and should concentrate the minds of terminal operators (if it ever enters in force). In the present moment this Convention has not the sufficient number of ratifications to enter in force (it needs at least five and it has just been ratified by Egypt and Georgia) (See Doc. n° 2).

### **3. Stevedores injury**

Stevedore claims arise from liability for illness, injury or death as a result of negligence on board or in relation to the vessel.

#### **a) Claims prevention**

The majority of claims involving loss of life or personal injury usually arise as a result of carelessness or lack of safety consciousness by persons working on or about the vessel. To ensure that accidents are kept to a minimum, it is of importance that the crew should exercise a high degree of care by making certain that any unsafe conditions are remedied without delay. Minor and seemingly unimportant conditions can sometimes lead to serious injury or even death. This is particularly so when stevedores or other persons are on board, since cargo handling operations are often performed in confined places, which increases the risk of injuries.

Particular attention should be paid to the covering, fencing and adequate lighting of tween decks, hatchways, tank openings and manholes. They are a threat to stevedores who enter the holds and cargo places, whether the injured stevedore or workman was on or off duty. Attention should also be paid to the iron access ladders leading down to the hold. Even though a ladder may have been damaged by the stevedores in negligent operations this does not absolve the ship of the duty of seeing that all is always safe for the use of stevedores.

b) Claims handling

When an accident occurs on board, the injured party should be given immediate and appropriate medical attention. What is appropriate will, of course, depend upon the circumstances, but many claims can be prevented if the injured party has received adequate when the incident occurs.

The shipowner and the P & I club's local correspondents should be notified immediately of any accident in order that correspondents and, in suitable cases, lawyers can be instructed to attend on board at the first available opportunity. The vessel's duty officer should immediately inspect the scene of the accident and record and photograph the physical conditions existing at the time. If any accident involves broken gear of equipment, the part concerned should be preserved and the master should take certain that is not removed from the vessel by any unauthorised person.

The following persons should normally be interviewed:

1. The injured person, if his or her condition so allows;
2. All the eye-witnesses, and whoever was first to arrive at the scene;
3. Any person who, while not witnessing the accident, has knowledge of the area, object or appliance involved in the accident.
4. Anyone with knowledge of the injured person's activity prior and/or subsequent to the accident.

Documentary evidence will include:

1. The bridge log book.
2. Medical log book.
3. Engine log book.
4. Maintenance and repairs records.
5. Diagrams and sketches of the relevant areas.

6. The medical and accident reports prepared by the ship's officers.

The appropriate level of investigation will of course depend on the nature of the incident and the injury sustained, and a full initial investigation report by the ship's officers is extremely useful in determining what further inquiries will be needed. When a claim is incurred the shipowner, in conjunction with the club, its correspondents and lawyers, will deal directly with the claimant. The majority of injury and death claims are settled before the case is submitted to a court, but in cases of questionable liability or when the claimant's demand is exorbitant, the shipowner may decide that the claim ought to be resisted.